

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Clerk's Minutes
Before the Honorable James O. Browning

CASE NOS. CIV 23-0869 JB/JFR; 23-0908 JB/JFR; 23-0977 JB/JFR; 23-1143 JB/JFR; 23-1150 JB/JFR; 24-0011 JB/JFR; 24-0058 JB/JFR; 24-0163 JB/JFR; 24-0170 JB/JFR

DATE: 4/1/2024

TITLES: *Lands, et al. v. FEMA, et al.; Dolan, et al. v. FEMA, et al.; Montoya, et al. v. FEMA, et al.; Cross, et al. v. FEMA, et al.; Gabaldon, et al. v. FEMA, et al.; Kennedy, et al. v. FEMA, et al.; Bowen, et al. v. FEMA, et al.; Sandoval, et al. v. FEMA, et al.; Gallagos, et al. v. FEMA, et al.*

COURTROOM CLERK: L. Rotonda

COURT REPORTER: J. Bean

COURT IN SESSION: 8:33 AM

TOTAL TIME: 2:24

TYPE OF PROCEEDING: SCHEDULING CONFERENCE

COURT RULING/DISPOSITION:

SEE BELOW

ATTORNEYS PRESENT FOR PLAINTIFF(S):

Jonna Lothyn
Brian Colon
Marc Lowry
Benjamin Siminou
Jacob Payne
Tom Tosdal
Ty Tosdal
Antonia Roybal-Mack

ATTORNEYS PRESENT FOR DEFENDANT(S):

Brett Eaton
Nicholas Sydow
Roberto Ortega
Samantha Kelly
Benjamin Minegar

PROCEEDINGS:

COURT IN SESSION: 8:33 AM

COURT: INDICATES COURT IS EXPERIENCING TECHNICAL ISSUES WITH ZOOM MEETING, WILL CALL CASE AND TAKE ENTRIES OF APPEARANCE AND REMOTE CONNECTION WILL BE ESTABLISHED AS SOON AS POSSIBLE. CALLS CASE, COUNSEL ENTER APPEARANCES.

ADDRESSES PARTIES REGARDING COURT'S UNDERSTANDING OF ISSUES IN RESPECTIVE CASES,

PROVIDES UPDATE AS TO COURT'S OPINION IN PROGRESS IN SEPARATE CASE REGARDING SIMILAR FEMA CLAIMS PREVIOUSLY HEARD BY COURT.

Ms. LOTHYN: ADDRESSES COURT REGARDING *DOLAN* MATTER.

COURT: QUERIES Ms. LOTHYN.

Ms. LOTHYN: RESPONDS TO COURT'S QUERIES.

Ms. ROYBAL-MACK: ADDRESSES COURT REGARDING ISSUES RELATED TO PROVISION OF ADMINISTRATIVE RECORD.

Ms. LOTHYN: ADDRESSES COURT REGARDING POTENTIAL CONSOLIDATION OF CERTAIN CASES.

COURT: QUERIES COUNSEL.

Ms. LOTHYN: RESPONDS TO COURT'S QUERIES, INDICATES THAT TO EXTENT POSSIBLE, WOULD LIKE TO AVOID MOTIONS PRACTICE, PROPOSES APPROACH THAT WOULD AVOID SAME.

Mr. SYDOW: ADDRESSES COURT REGARDING SAME.

COURT: QUERIES COUNSEL.

Mr. SYDOW: RESPONDS TO COURT'S QUERIES.

COURT: INDICATES WILL USE TRADITIONAL APPROACH TO RECORD, WILL NOT PERMIT PLAINTIFFS TO PROVIDE SUPPLEMENTAL RECORD IF THERE IS DISAGREEMENT. INSTEAD WILL REQUIRE THAT PLAINTIFFS OBJECT TO SAME.

Ms. LOTHYN: RESPONDS AS TO PREFERENCES IF THIS APPROACH IS TAKEN.

Mr. SYDOW: RESPONDS TO SAME.

Mr. TOSDAL: ADDRESSES COURT REGARDING POSITION AS TO SCHEDULING IN *LANDS* CASE, INDICATES THINKS INSTANT MATTER AND *DOLAN* SHOULD RUN ON SEPARATE TRACK FROM OTHER MATTERS.

COURT: INDICATES WILL SET DEADLINES IN *LANDS* AND *DOLAN* CASES FOR GOVERNMENT TO FILE ADMINISTRATIVE RECORD BY APRIL 30, 2024, FOR PLAINTIFFS TO FILE OBJECTIONS THERETO BY

MAY 15, 2024, AND HEARING TO RESOLVE DISPUTES ON MAY 31, 2024.

MR. TOSDAL: ADDRESSES COURT REGARDING *LANDS* CASE, INDICATES THAT PLAINTIFFS THINK MATTER IS PRIMARILY AN APA MATTER.

MR. EATON: ADDRESSES COURT REGARDING SAME.

COURT: QUERIES COUNSEL REGARDING INCLUSION OF STATE LAW ISSUES.

MR. EATON: RESPONDS TO SAME.

COURT: WILL TRY TO FINALIZE ADMINISTRATIVE RECORD BY MAY 31, 2024, WILL SET DEADLINE FOR FILING OF BRIEFING ON MERITS BY JULY 19, 2024, GOVERNMENT'S RESPONSE BY AUGUST 28, 2024, REPLY BRIEFING DEADLINE BY SEPTEMBER 27, 2024, AND HEARING ON MERITS BY SEPTEMBER 30, 2024.

MS. LOTHYN: AGREES TO SAME.

COURT: ADDRESSES PARTIES REGARDING ADDITIONAL CASES, QUERIES MS. LOTHYN AS TO SAME.

MS. LOTHYN: RESPONDS TO COURT'S QUERIES.

COURT: QUERIES PARTIES.

MS. LOTHYN: ADDRESSES COURT, RESPONDS TO QUERIES.

MR. SYDOW: RESPONDS TO SAME.

COURT: WILL SET MOTION HEARING IN *MONTROYA* CASE FOR APRIL 23, 2024.

WILL SET ISSUES RELATED TO APA CHALLENGE TO REGULATIONS IN *MONTROYA*, *CROSS*, *GABALDON*, *KENNEDY*, *BOWEN* AND *SANDOVAL* CASES ON SAME SCHEDULE. GOVERNMENT WILL LODGE ADMINISTRATIVE RECORD BY JUNE 1, 2024, PLAINTIFFS WILL FILE OBJECTIONS TO RECORD BY JUNE 17, 2024, AND COURT WILL SET HEARING AS TO OBJECTIONS FOR JULY 1, 2024. PLAINTIFFS WILL FILE BRIEFING ON MERITS BY AUGUST 9, 2024, GOVERNMENT WILL FILE RESPONSE BY SEPTEMBER 18, 2024, AND PLAINTIFFS WILL FILE REPLY BY OCTOBER 18, 2024. COURT WILL THEN SET HEARING ON BRIEFING FOR OCTOBER 21, 2024.

Ms. ROYBAL-MACK: AGREES TO APA PORTIONS FOR *SANDOVAL* MATTER.

MR. SYDOW: ADDRESSES COURT REGARDING QUESTIONS RELATED TO RECORD.

COURT: QUERIES MS. LOTHYAN.

Ms. LOTHYAN: RESPONDS TO COURT'S QUERIES.

Ms. ROYBAL-MACK: ADDRESSES COURT REGARDING SAME.

COURT: QUERIES PARTIES REGARDING COURT'S UNDERSTANDING AS TO FORTHCOMING ACTIONS INVOLVING PARTIES TO INSTANT MATTERS.

Ms. LOTHYAN: CONFIRMS COURT'S UNDERSTANDING.

COURT: QUERIES COUNSEL AS TO HOW THEY WISH TO PROCEED AS TO REMAINING ISSUES.

Ms. LOTHYAN: RESPONDS TO COURT'S QUERIES.

COURT: INDICATES WILL SET SEPARATE DEADLINE AS TO MANDAMUS ACTIONS, DIRECTS COUNSEL TO CONFER AT BREAK.

COURT IN RECESS: 10:03 AM

COURT IN SESSION: 10:23 AM

COURT: QUERIES MS. ROYBAL-MACK REGARDING FTCA ISSUES AS THEY RELATE TO INSTANT CLAIMS.

Ms. ROYBAL-MACK: RESPONDS TO COURT'S QUERIES.

COURT: QUERIES COUNSEL REGARDING AGREEMENT AS TO PROPOSED DEADLINES, COUNSEL INDICATE AGREEMENT AS TO SAME.

Ms. LOTHYAN: ADDRESSES COURT REGARDING FURTHER DEADLINES.

MR. SYDOW: ADDRESSES COURT, OUTLINES GOVERNMENT'S OBJECTIONS AND POSITION AS TO SAME.

COURT: PROPOSES SETTING PORTION OF CLAIMANTS ON ONE SCHEDULE.

MR. SYDOW: RESPONDS TO COURT'S QUERIES.

COURT: INDICATES WILL SET SCHEDULE FOR SUBSET OF CLAIMANTS FOR PRODUCTION OF ADMINISTRATIVE RECORD BY MAY 13, 2024, DEADLINE FOR OBJECTIONS TO BE FILED BY MAY 28, 2024, AND COURT WILL SET A HEARING ON ANY ISSUES WITH RECORD FOR JUNE 17, 2024. THE PLAINTIFFS WILL FILE THEIR BRIEFING ON THE MERITS BY JULY 2, 2024, GOVERNMENT WILL FILE ITS RESPONSE BY JULY 22, 2024, PLAINTIFFS WILL FILE REPLY BY AUGUST 12, 2024, AND COURT WILL SET A HEARING FOR AUGUST 13, 2024.

MS. ROYBAL-MACK: ADDRESSES COURT REGARDING PROPOSED SCHEDULE FOR MATTERS WITH WRIT OF MANDAMUS ISSUES PLEAD.

MR. SYDOW: RESPONDS TO SAME.

COURT: WILL SET HEARING ON ISSUES FOR MAY 8, 2024.

QUERIES MS. LOTHYAN REGARDING ISSUES IN *GALLEGOS* CASE.

MS. LOTHYAN: RESPONDS TO COURT'S QUERIES, PROPOSES USING SCHEDULE FLOWING FROM PRODUCTION OF ADMINISTRATIVE RECORD ON JUNE 1, 2024.

MR. SYDOW: RESPONDS TO SAME, AGREES TO SCHEDULE.

COURT: INDICATES WILL SET MOTION HEARING ON GOVERNMENT'S FORTHCOMING MOTION TO DISMISS FOR MAY 29, 2024.

QUERIES MS. LOTHYAN REGARDING CLAIMS ENCOMPASSED IN CASES BEFORE OTHER JUDGES.

MS. LOTHYAN: RESPONDS TO COURT'S QUERIES.

MR. SYDOW: RESPONDS TO SAME.

COURT: QUERIES PARTIES REGARDING WHETHER ANY ISSUES IN OTHER CASES WILL IMPACT INSTANT SET OF CASES.

MS. LOTHYAN: RESPONDS TO SAME.

MS. ROYBAL-MACK: RESPONDS TO COURT'S QUERIES.

MR. SYDOW: RESPONDS TO COURT'S QUERIES.

COURT: QUERIES COUNSEL AS TO WHETHER THERE IS ANYTHING ELSE THAT COURT NEEDS TO DISCUSS WITH PARTIES, COUNSEL INDICATE THERE IS NOT.

COURT IN RECESS: 11:17 AM